

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
APRIL 18, 2023**

ITEM 6

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION ADOPTING COMPREHENSIVE PROJECT AND FUNDABLE PROJECT LISTS FOR THE SITE CLEANUP SUBACCOUNT PROGRAM (SCAP) AND DELEGATING AUTHORITY TO THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE (DIVISION) TO AMEND THE LISTS, APPROVE EXPENDITURES AND PROJECT FUNDING, EXECUTE GRANT AGREEMENTS, CONTRACTS, AND AMENDMENTS, REFER ACTIONS TO THE ATTORNEY GENERAL, AND PERFORM OTHER NECESSARY ACTIONS.

DISCUSSION

The State Water Resources Control Board (State Water Board) is responsible for the administration of the SCAP. A portion of the storage fees deposited into the Underground Storage Tank Cleanup Fund are transferred into the SCAP annually. The State Water Board may expend SCAP funds by executing contracts to pay for reasonable and necessary costs to investigate and remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination consistent with Health and Safety Code section 25299.50.6 (hereafter, the SCAP Statute). The State Water Board also may expend SCAP funds by issuing grants to eligible grant applicants for the reasonable and necessary costs of projects that remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination consistent with the SCAP Statute.

There are two requirements for a project to be eligible for grant funding under SCAP. First, the State Water Board, the Department of Toxic Substances Control, a Regional Water Quality Control Board, a certified local oversight program agency, a unified program agency, or a local officer must have required the responsible parties to undertake or contract for investigation or cleanup pursuant to an oral or written order, directive, notification, or approval issued pursuant to section 25187, 25187.1, 25296.10, 25355.5, 25358.3, or 101480 of the Health and Safety Code, or any section of the Water Code (SCAP-Qualifying Order/Directive). The State Water Board may waive this requirement if the State Water Board finds that it is infeasible for an order to be issued before initiation of remediation. Second, the State Water Board must find that no responsible party has sufficient financial resources to pay for the required response actions.

The SCAP Statute requires the State Water Board to consider the following factors when determining which eligible projects to fund, which are discussed in more detail below.

1. The degree to which human health, safety, and the environment are threatened by surface water or groundwater contamination at the location. The proposed resolution provides that this factor includes the following:
 - a. The impact to, or threatened impact to, a potential source of drinking water; and
 - b. Soil or soil vapor contamination at the project location.
2. Whether the location is located in a small or financially disadvantaged community. The proposed resolution defines these terms as follows:
 - a. A “small community” is defined as a community providing drinking water service to less than 10,000 people.
 - b. A “financially disadvantaged community” or “disadvantaged community” is defined as a community with a median annual household income of less than 80 percent of the statewide median annual household income.
3. The cost and potential environmental benefit of the investigation or cleanup. The proposed resolution provides that this factor includes the following:
 - a. The scope, schedule, and budget of the proposed work; and
 - b. The technical feasibility of the proposed project.
4. Whether there are other potential sources of funding for the investigation or cleanup.
5. Other information the State Water Board identifies as necessary for consideration. Consistent with State Water Board [Resolution No. 2021-0050](#) and the [Racial Equity Action Plan](#), the proposed resolution provides that the State Water Board will consider environmental justice by evaluating the most recent CalEnviroScreen for the project location when evaluating projects for expenditures of SCAP remediation funds..

The SCAP Statute requires the State Water Board to review SCAP grant applications and adopt a list of applicants to be awarded grants at least annually. State Water Board staff have scored all the applications for SCAP grant funding received on or before February 24, 2023, consistent with the SCAP Statute and the proposed resolution using the SCAP Ranking Methodology, which is attached to the proposed resolution, and placed them on the proposed SCAP Comprehensive Grant Project List. Scores are provisional and may be modified by the Deputy Director, or designee, consistent with the proposed resolution. State Water Board staff have designated a subset of the proposed SCAP Comprehensive Grant Project List as the proposed SCAP Fundable Grant Project List. The proposed SCAP Fundable Grant Project List reflects projects that are anticipated to complete grant eligibility review and potentially be funded during

Fiscal Years 2022-2023 and 2023-2024, including projects with existing grant funding that are anticipated to require additional grant funding. The Deputy Director or designee will ensure sufficient funds are available for eligible projects with the highest scores prior to approving funding for lower scoring eligible projects that have not previously received SCAP grant or contract funding. Placement on the SCAP Fundable Grant Project List is not a commitment to provide grant funding. Funding is at the discretion of the Deputy Director or designee, consistent with the proposed resolution.

State Water Board staff also have scored all requests for SCAP contract funding received on or before February 24, 2023, consistent with the SCAP Statute and the proposed resolution using the SCAP Ranking Methodology and placed them on the proposed SCAP Comprehensive Contract Project List. Contract projects on the SCAP Comprehensive Contract Project List potentially are eligible for funding during Fiscal Years 2022-2023 and 2023-2024.

To promote efficiency, it is desirable to delegate authority to the Deputy Director of DFA, or designee, to amend the SCAP Comprehensive Grant Project List and SCAP Fundable Grant Project List as follows:

1. By removing any project from the SCAP Comprehensive Grant Project List and SCAP Fundable Grant Project List upon determining that the project is not eligible for grant funding under the SCAP Statute;
2. By amending the ranking score consistent with the SCAP Statute and this resolution using the SCAP Ranking Methodology;
3. By removing any project whose ranking score has been amended from the SCAP Fundable Grant Project List upon determining that the project no longer is ranked high enough for inclusion on the SCAP Fundable Grant Project List;
4. By adding new projects to the SCAP Comprehensive Grant Project List consistent with the consideration factors set forth in the SCAP Statute and this resolution periodically throughout the year and posting the updated list on the State Water Board's website;
5. By adding new projects to the SCAP Fundable Grant Project List if the project is in a location that is a disadvantaged community or where the score for the location from the newest version of CalEnviroScreen indicates that the project is in an area where environmental justice is a concern;
6. By adding projects to the SCAP Fundable Grant Project List that previously have received SCAP grant funding consistent with the SCAP Statute and consistent with this resolution except that they are not ranked high enough for inclusion on the SCAP Fundable Grant Project List; and
7. By adding projects that are on the SCAP Comprehensive Contract Project List to the SCAP Fundable Grant Project List upon determining that the project is eligible for grant funding under the SCAP Statute.

It further is desirable to delegate authority to the Deputy Director of DFA, or designee, to amend the SCAP Comprehensive Contract Project List as follows:

1. By removing any project from the SCAP Comprehensive Contract Project List upon determining that the project is not eligible for funding under the SCAP Statute;
2. By amending the ranking score consistent with the SCAP Statute and this resolution using the SCAP Ranking Methodology; and
3. By adding new projects to the SCAP Comprehensive Contract Project List consistent with the SCAP Statute and this resolution periodically throughout the year and posting the updated list on the State Water Board's website.

It further is desirable to delegate to the Deputy Director of DFA, or designee, to authorize expenditures from the SCAP, consistent with section 25299.50.6, and to perform other actions necessary to administer the SCAP. This includes authority to approve or deny SCAP grants, including, when appropriate, approvals that require waiving the SCAP-Qualifying Order/Directive requirement if the Deputy Director, or designee, finds it is infeasible for the order or directive to have been issued before the initiation of remediation. It also is desirable to delegate to the Deputy Director of the Division, or designee, the authority to execute grant agreements, contracts, and amendments for the expenditure of SCAP funds.

The State Water Board is authorized to request the California Attorney General to recover the actual, reasonable costs of investigation or cleanup undertaken with SCAP funds from a responsible party in appropriate cases. The State Water Board also is authorized to recover SCAP grant moneys paid, but to which the grantee is not entitled, by various means, including, but not limited to, referring such matters to the California Attorney General. It is desirable to delegate to the Deputy Director, or designee, with the concurrence of the Chief Counsel, the authority to refer appropriate cost recovery matters to the California Attorney General.

This resolution supersedes State Water Board [Resolution No. 2016-0032](#) in full.

POLICY ISSUE

State Water Board adoption of the proposed resolution adopting Comprehensive Project and Fundable Project Lists for the SCAP and delegating authority to the Deputy Director, or designee, to amend the lists, approve expenditures and project funding, execute SCAP grant agreements, contracts, and amendments, refer actions to the Attorney General, and perform other necessary actions.

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

There is no impact to the Regional Water Quality Control Board or Division of Drinking Water District Offices.

HUMAN RIGHT TO WATER ANALYSIS

The actions proposed under this item are consistent with the established policy of the State recognizing the human right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes (human right to water; Water Code section 106.3). The proposed actions also are consistent with [Resolution No. 2016-0010](#), in which the State Water Board adopted the human right to water as a core value and top priority. As directed by the State Water Board in Resolution No. 2016-0010 staff has determined that the proposed actions support the human right to water by investigating and remediating releases of hazardous substances to California's water resources and drinking water.

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed resolution adopting Comprehensive Project and Fundable Project Lists for the SCAP and delegating authority to the Deputy Director, or designee, to amend the lists, approve expenditures and project funding, execute SCAP grant agreements, contracts, and amendments, refer actions to the Attorney General, and perform other necessary actions.